

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2375

Introduced by

Senators Castaneda, Bekkedahl, Lee, Barta

Representatives Vigesaa, Ostlie

1 A BILL for an Act to create and enact a new section to chapter ~~26.1-36.9~~43-28 of the North
2 Dakota Century Code, relating to joint negotiations by dental providers with dental insurers; to
3 amend and reenact section 54-57-07 of the North Dakota Century Code, relating to
4 compensation for the provision of administrative law judges; and to provide a penalty.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 ~~SECTION 1. A new section to chapter 26.1-36.9 of the North Dakota Century Code is~~
7 ~~created and enacted as follows:~~

8 **SECTION 1.** A new section to chapter 43-28 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Joint negotiations by dental providers with dental insurers.**

- 11 1. As authorized under this section, two or more dental providers practicing in the service
12 area of a dental insurer may jointly negotiate with the dental insurer and engage in
13 related joint activity regarding non-fee-related matters including:
- 14 a. Definition of medical necessity and other conditions of coverage.
 - 15 b. Utilization management criteria and procedures.
 - 16 c. Clinical practice guidelines.
 - 17 d. Preventative care and other medical management policies.
 - 18 e. Patient referral standards and procedures.
 - 19 f. Drug formularies and standards for prescribing off-formulary drugs.
 - 20 g. Quality assurance programs.

- 1 h. Liability terms for a dental provider and dental insurer.
- 2 i. Methods and timing of payments.
- 3 j. Administrative procedures.
- 4 k. Credentialing standards and procedures for selection, retention, and termination
- 5 of participating dentists.
- 6 l. Mechanisms for resolving disputes between the dental insurer and dental
- 7 provider.
- 8 m. Dental benefits sold or administered by the dental insurer in which the dental
- 9 provider is required to participate.
- 10 n. Formulation and application of reimbursement methodology.
- 11 o. Inclusion or alteration of a contractual term or condition, except when the
- 12 inclusion or alteration is otherwise required by federal or state law.
- 13 2. As authorized under this section, upon a finding by the ~~commissioner~~office of
- 14 administrative hearings that a dental insurer has substantial market power in a service
- 15 area and any of the terms or conditions of the contract with the dental insurer pose an
- 16 actual or potential threat to the quality and availability of patient care among covered
- 17 individuals, two or more independent dental providers may jointly negotiate with the
- 18 dental insurer and engage in related joint activity relating to fees and fee-related
- 19 matters, including the:
- 20 a. Amount of payment.
- 21 b. Amount of discount.
- 22 c. Procedure codes or descriptions of services covered by payment.
- 23 d. Appropriate grouping of procedure codes.
- 24 3. a. The dental providers may communicate with each other and a joint negotiation
- 25 representative authorized to negotiate on behalf of the dental providers with the
- 26 dental insurer concerning any contractual term or condition to be negotiated. For
- 27 purposes of this section, a "joint negotiation representative" means a
- 28 representative selected by two or more independent dental providers to engage
- 29 in joint negotiations with a dental insurer on behalf of the dental providers.
- 30 b. The joint negotiation representative is the only party authorized to negotiate with
- 31 the dental insurer on behalf of the dental providers as a group.

- 1 c. The dental providers may agree to be bound by the terms and conditions
2 negotiated by the joint negotiation representative.
- 3 4. A person may not act as a joint negotiation representative without express permission
4 from the ~~commissioner~~office of administrative hearings.
- 5 5. Upon the joint negotiation representative and dental insurer determining an agreement
6 has been reached on contractual terms or conditions that will be the subject matter of
7 the negotiations, the joint negotiation representative shall submit to the
8 ~~commissioner~~office of administrative hearings, for approval, a copy of the proposed
9 contract between the dental providers and dental insurer.
- 10 a. Within thirty days of receipt of the proposed contract, the ~~commissioner~~office of
11 administrative hearings shall review the proposed contract and provide a
12 determination. If the ~~commissioner~~office of administrative hearings disapproves
13 the contract, the ~~commissioner~~office of administrative hearings shall
14 communicate to the joint negotiation representative any deficiencies and specific
15 remedial measures for the deficiencies.
- 16 b. Upon approval of the proposed contract, the dental providers, through the joint
17 negotiation representative, and the dental insurer may engage in negotiations.
- 18 c. The joint negotiation representative shall submit the negotiated contract to the
19 ~~commissioner~~office of administrative hearings for review.
- 20 6. A negotiated contract and any plan of action for implementing a negotiated contract
21 must be approved by the ~~commissioner~~office of administrative hearings before
22 becoming effective. Within thirty days of receipt of the negotiated contract, the
23 ~~commissioner~~office of administrative hearings shall review the proposed contract and
24 provide a determination. If the ~~commissioner~~office of administrative hearings
25 disapproves the contract, the ~~commissioner~~office of administrative hearings shall
26 communicate to the joint negotiation representative any deficiencies and specific
27 remedial measures for the deficiencies.
- 28 7. The ~~commissioner~~office of administrative hearings shall adopt rules and procedures
29 as necessary to carry out the responsibilities of this section.
- 30 8. This section does not apply to dental benefit plans providing covered services
31 exclusively or primarily to individuals who are eligible for medical assistance.

- 1 9. Any negotiations under this section must be made in good faith. A person that does
2 not negotiate in good faith may be subject to sanctions or penalties as determined by
3 the ~~commissioner~~office of administrative hearings.
- 4 10. This section may not be construed to:
- 5 a. Permit a coordinated cessation reduction or limitation of dental services.
6 b. Affect governmental approval of, or otherwise restrict activity by, dental providers
7 which is not prohibited under federal antitrust law or require approval of contract
8 terms to the extent the terms are exempt from state regulation under federal law.
- 9 11. The dental insurer is responsible for costs for services rendered by the office of
10 administrative hearings and shall make payment for costs for services in accordance
11 with section 54-57-07 and rules adopted by the office of administrative hearings.

12 **SECTION 2. AMENDMENT.** Section 54-57-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-57-07. Compensation for provision of administrative law judges - Special fund**
15 **established - Continuing appropriation.**

- 16 1. The office of administrative hearings shall require payment for services rendered by
17 any administrative law judge provided by it to ~~any~~an agency, ~~to any~~unit of local
18 government in this state, ~~to any~~tribal government in this state, ~~or to~~the judicial
19 branch, or a nongovernmental entity, in the conduct of an administrative hearing and
20 related proceedings, and proceedings under section 1 of this Act, and those entities
21 must make the required payment to the office. Payment must include payment for
22 support staff necessary to render administrative law judge services. Moneys received
23 by the office of administrative hearings in payment for providing an administrative law
24 judge to conduct an administrative hearing and related proceedings, and proceedings
25 under section 1 of this Act, must be deposited into the operating fund of the office of
26 administrative hearings.
- 27 2. The office of administrative hearings shall require payment for mileage, meals, and
28 lodging in connection with services rendered by an administrative law judge provided
29 to ~~any~~an agency, ~~to any~~unit of local government in this state, ~~to any~~tribal government
30 in this state, ~~or to~~the judicial branch, or a nongovernmental entity, in the conduct of an
31 administrative hearing and related proceedings, and proceedings under section 1 of

- 1 this Act, and those entities must make the required payment to the office. Payment for
2 meals and lodging must be in the amounts allowable under section 44-08-04. Payment
3 for mileage when using state vehicles must be in amounts set for user charges under
4 section 24-02-03.5. All other payments must be in amounts allowed for other state
5 officials and employees. Either general fund or special fund moneys, or other income,
6 may be used for the payment of mileage, meals, and lodging under this subsection.
- 7 3. A special fund is established in the state treasury and designated as the administrative
8 hearings fund. The office of administrative hearings shall deposit in the fund all
9 moneys received by it in payment for providing services rendered by any
10 administrative law judge in the conduct of an administrative hearing and related
11 proceedings, and proceedings under section 1 of this Act, under this chapter, as well
12 as all moneys received by the office in payment for mileage, meals, and lodging in
13 connection with providing any administrative law judge to conduct an administrative
14 hearing and related proceedings, and proceedings under section 1 of this Act. The
15 moneys in the fund are a standing and continuing appropriation and are appropriated,
16 as necessary, for the following purposes:
- 17 a. For the office of administrative hearings to pay for salaries, wages, benefits,
18 operating expenses, and equipment, including payment to temporary
19 administrative law judges, as necessary, for the purpose of providing requested
20 administrative law judges to ~~agencies~~ an agency, ~~to any~~ unit of local government
21 in this state, ~~to any~~ tribal government in this state, ~~or to~~ the judicial branch, or a
22 nongovernmental entity.
- 23 b. For the office of administrative hearings to pay mileage, meals, and lodging to
24 any administrative law judges, as necessary, in connection with the services to be
25 provided under this chapter.

